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### STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Kyphon Inc.

Application No./Patent No.: 6,926,728 Filed/Issue Date: 8/9/05

Entitled: Curved dilator and method

Kyphon Inc., a corporation  
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest  
(The extent (by percentage) of its ownership interest is \_\_\_\_\_ %)

in the patent application/patent identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: Inventors To: St. Francis Medical Technologies, Inc.

The document was recorded in the United States Patent and Trademark Office at  
Reel 012462, Frame 0472, or for which a copy thereof is attached.

2. From: St. Francis Medical Technologies, Inc. To: Kyphon Inc.

The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

3. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☒ As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

John R. Owen  
Signature

29 Dec 07  
Date

John R. Owen Reg. 42,055

(919) 854-1844

Printed or Typed Name

Telephone Number

Attorney, 5910-241  
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

# Delaware

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*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"ST. FRANCIS MEDICAL TECHNOLOGIES, INC.", A DELAWARE CORPORATION,

WITH AND INTO "KYPHON INC." UNDER THE NAME OF "KYPHON INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-EIGHTH DAY OF NOVEMBER, A.D. 2007, AT 9:43 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



2367517 8100M

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You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6192010

DATE: 11-28-07

**CERTIFICATE OF OWNERSHIP AND MERGER**  
**MERGING**  
**ST. FRANCIS MEDICAL TECHNOLOGIES, INC., A DELAWARE CORPORATION**  
**INTO**  
**KYPHON INC., A DELAWARE CORPORATION**

*Pursuant to Section 253  
of the General Corporation Law of the State of Delaware*

November 27, 2007

Kyphon Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware (the "Parent Corporation"),

**DOES HEREBY CERTIFY:**

**FIRST:** That the Parent Corporation was incorporated pursuant to the General Corporation Law of the State of Delaware (the "DGCL").

**SECOND:** That the Parent Corporation owns all of the outstanding shares of each class of the capital stock of St. Francis Medical Technologies, Inc., a Delaware corporation (the "Subsidiary Corporation").

**THIRD:** That the Parent Corporation, by the following resolutions of its Board of Directors, duly adopted as of November 26, 2007, determined to merge the Subsidiary Corporation into itself, with the Parent Corporation being the surviving corporation:

RESOLVED, that pursuant to Section 253 of the DGCL, the Subsidiary Corporation shall be merged (the "Merger") with and into the Parent Corporation, whereupon the separate existence of the Subsidiary Corporation shall cease, and the Parent Corporation shall be the surviving corporation;

RESOLVED, that the Merger is hereby approved pursuant to the provisions of Section 253 of the DGCL;

RESOLVED, that the Merger shall become effective upon filing of the Certificate of Ownership and Merger with the Delaware Secretary of State or at such time as is otherwise specified therein;

RESOLVED, that from and after the effective time, until successors are duly elected or appointed in accordance with applicable law, the directors of the Parent Corporation at the effective time shall be the directors of the surviving corporation, and the officers of the Parent Corporation at the effective time shall be the officers of the surviving corporation;

RESOLVED, that from and after the effective time, the name of the surviving corporation shall be Kyphon Inc.;

RESOLVED, that from and after the effective time, the bylaws of the Parent Corporation shall be the bylaws of the surviving corporation;

RESOLVED, that from and after the effective time, the certificate of incorporation of the Parent Corporation shall be the certificate of incorporation of the surviving corporation until amended in accordance with applicable law.

**FOURTH:** That the merger of the Subsidiary Corporation into the Parent Corporation shall be effective as of the date and time of filing of this Certificate of Ownership and Merger with the Delaware Secretary of State.

(This space intentionally left blank.)

IN WITNESS WHEREOF, the Parent Corporation has caused this Certificate of Ownership and Merger to be signed as of the date first written above by a duly authorized officer, declaring that the facts stated herein are true.

KYPHON INC., a Delaware corporation

By: 

Name: Keyna P. Skeffington

Title: Assistant Secretary